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INTRODUCTORY COMMENTS

The present amendment replies to a Non-Final Office Action dated June 23, 2004. In the Non-Final Office Action, the Examiner allowed claims 1-20 and 20-21 and rejected claims 11-19 under 35 U.S.C. §101 as directed to nonpatentable subject matter. Independent claim 11 has been amended for non-statutory reasons to clarify the patentable subject matter.

The Applicants respectfully request reconsideration and further examination of the present application under 37 CFR §1.112.

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-- REMARKS --

Applicant thanks the Examiner for the noted allowability of claims 1-10 and 20-21.

The 35 U.S.C. §101 rejection of claims 11-19 is traversed. Although the Examiner correctly notes that claims 11-19 are directed to a computer program, that fact does not make claims 11-19 unpatentable under §101. It is well settled that functional descriptive material, such as computer programs which impart functionality when employed as a computer component are patentable. See, e.g. MPEP 2106(B)(1). Independent claim 11 is directed to a "computer usable medium for selectively inhibiting wheel rotation of a vehicle during brake failure," which constitutes a structure that is statutory matter under §101.

To be a statutory process, a claimed computer-related process either results in a physical transformation outside the computer or be limited to a practical application within the technological arts. See, MPEP 2106(B)(2)(b). In claim 11, and the claims dependent therefrom, the computer-related process results in "applying the at least one command brake force to the at least one non-failed brake wherein at least one of an undesired yaw moment and a yaw moment rate of change are limited to predetermined values." Application of a command brake force is precisely the "physical transformation" envisioned by the MPEP. In other words, the computer-related process claimed in claim 11 is statutory because it requires physical acts (application of brake force) to be performed outside the computer (at the brakes) independent of and following the steps to be performed by a programmed computer (the program determines the amount of force to be applied); where those acts involve the manipulation of tangible physical objects (the brakes) and result in the object having a different physical attribute (the extent of the braking force) or structure. MPEP 2106(B)(2)(b)(i), citing Diamond v. Diehr, 450 U.S. at 187.

Therefore, independent claim 11, drawn to a "computer usable medium for selectively inhibiting wheel rotation of a vehicle during brake failure," is drawn to statutory subject matter, and Applicant requests that the §101 rejection to claim 11, and claims 12-19 depending directly or indirectly therefrom, be withdrawn.

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CONCLUSION

Examiner Schwartz's rejections of claims 1-21 have been obviated by Applicant's arguments The Applicant respectfully submits that claims 1-21 herein fully satisfy the requirements of 35 U.S.C. §§102, 103 and 112, as well as 37 CFR 1.126. In view of the foregoing, favorable consideration and early passage to issue of the present application is respectfully requested.
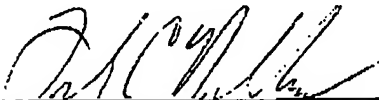
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Respectfully submitted,
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